IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.4292 of 2006
Date of decision: January 23, 2007.

Smt. Bhori Devi

...**Petitioner(s)**

v.

Smt. Bhagoti Devi

...**Respondent(s)**

Present: Shri N.S. Shekhawat, Advocate for the petitioner.

Shri R.S. Sihota, Advocate, for respondent No.1.

Shri Ravi Dutt Sharma, Dy. Advocate General, Haryana.

Surya Kant, J. (Oral)

This revision petition under Article 227 of the Constitution of India is directed against the order dated July 20, 2006 passed by the Election Tribunal-cum-Civil Judge (Junior Division), Mahendergarh where recounting of votes regarding election to the office of Sarpanch of Gram Panchayat Aghiyar, Tehsil and District Mahendergarh, has been ordered.

[2]. The facts may be briefly noticed.

The election for the post of Sarpanch of Gram Panchayat of village Aghiyar was held on 3.4.2005. There were two polling booths, No.1 and 2, and a total of 869 votes were polled. The petitioner, i.e. the returned candidate, was stated to have secured 249 votes whereas respondent No.1 – the election petitioner, secured 246 votes.

[3]. The above stated election has been challenged by respondent

No.1 through an election petition alleging adoption of corrupt practices by the petitioner. In addition, Respondent No.1 also sought recount of the votes in accordance with Section 176(4)(b) of the Haryana Panchayati Raj Act, 1994 (for short the Act), which reads as follows:-

> "***176. Determination of validity of election enquiry by judge and procedure.-*** *(1) If the validity of any election of a member of a Gram Panchayat, Panchayat Samiti or Zila Parishad or Sarpanch of Gram Panchayat, Chairman or Vice-Chairman, President or Vice-President of Panchayat Samiti or Zila Parishad respectively is brought in question by any person contesting the election or by any person qualified to vote at the election to which such question relates, such person may at any time within thirty days after the date of the declaration of results of the election, present an election petition to the civil court having ordinary jurisdiction in the area within which the election has been or should have been held, for the determination of such question.*
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> *(2) xxxx xxxx xxxx xxxx*
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> *(3) xxxx xxxx xxxx xxxx*
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> *(4)(a) xxxx xxxx xxxx xxxx*
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> *(b) If, in any case to which clause (a) or clause (aa) does not apply, the validity of an election is in dispute between two or more candidates, the court shall after a scrutiny and computation of the votes recorded in favour of each candidates, declare the candidate who is found to have the large number of valid votes in his favour, to have been duly elected:*
>
> *Provided that after such computation, if any, equality of votes is found to exist between any candidate and the addition of one vote will entitled any of the candidates to be declared elected, one additional vote shall be added to the total number of valid votes found to have been received in the favour of such candidate or candidates, as the case may be, elected by lot*

drawn in the presence of the judge in such manner as he may determine."

[4]. Along with the election petition, respondent No1 also moved an application for 'scrutiny' and 'computation' of the votes. The said application has been allowed by the Civil Court-cum-Election Tribunal vide the impugned order after holding that the margin between the elected candidate and the election petitioner is of 3 votes only and there are specific allegations to the effect that the Presiding Officer had wrongly declared respondent No.1's valid votes to be invalid.

[5]. Aggrieved, the elected candidate, namely, the petitioner has approached this court.

[6]. On 18.8.2006, while issuing notice of motion, it was directed that in compliance to the impugned order, recount of votes be held under the supervision of the learned Civil Court-cum-Election Tribunal, however, the result thereof shall not be notified/declared and the same be sent to this court in a sealed cover.

[7]. It was thereafter that this Court received a reference sent by the learned District & Sessions Judge, Mahendergarh forwarding Memo No.864 dated 4.11.2006 of the Election Tribunal-cum-Civil Judge (Junior Division), Mahendergarh, intimating that the record of the election of the Sarpanch related to village Aghiyar was summoned but the office of District Development & Panchayat Officer could produce ballot papers relating to booth No.282 only and the said office informed that the ballot papers relating to booth No.281 were not available in their office. The learned Presiding Officer of the civil court, therefore expressed his inability to recount the votes. (emphasis applied)

[8]. Taking serious note of the afore-mentioned reference and by enlarging the scope of these proceedings, vide order dated 16.11.2006, the Deputy Commissioner, Superintendent of Police and the District Development and Panchayat Officer of District Mahendergarh at Narnaul were directed to trace out the ballot papers of booth No.281 and produce the same before the Election Tribunal-cum-Civil Judge (Junior Division), Mahendergarh so that the recount could take place.

[9]. The above named authorities of the District Administration, however, informed that the ballot papers of booth No.281 were untraceable. The Deputy Commissioner explained that a fact-finding preliminary inquiry was got conducted from the SDO (Civil) and as per the said report, one Vijay Pal who was the Presiding Officer of booth No.1 was involved in misplacement/destruction of the ballot papers of booth No.281. The Superintendent of Police, Narnaul informed that a criminal case vide FIR No.245 dated 28.11.2006, under section 409, 120-B IPC, read with section 185 of the Haryana Panchayati Raj Act, 1994 has been registered at Police Station, Kanina in relation to the above stated incident.

[10]. In the light of the above stated subsequent events brought to the notice of this Court and the helplessness expressed by the learned Election Tribunal in holding recount of the votes polled in the election, Learned Counsel for the parties were requested to address this Court as to what appropriate directions can be issued in the light of the changed circumstances.

[11]. It is argued on behalf of the petitioner – elected candidate, that the ballot papers of one of the booths being unavailable, no recount can take place, therefore, the revision petition is liable to be accepted. On the other

hand, Learned Counsel for respondent No.1 – the election petitioner contends that the fraud which has been committed by the Presiding Officer of booth No.1 in connivance with the petitioner, who was declared elected illegally, cannot be allowed to be perpetuated by expressing helplessness for recount. It is argued that once it has become impossible to find out as to which candidate had actually secured the highest number of valid votes and, thus, got the mandate of majority of voters, the election held on 3.4.2005 itself is liable to be declared invalid which would necessarily mean that a fresh election should be be held in accordance with Section 178 of the Act read with Rule 79 of the Haryana Panchayati Raj Election Rules, 1994.

[12]. The scope of Section 176(4)(b) of the Act was considered by a Full Bench of this Court in the case of **Radha Kishan v. Election Tribunal-cum-Sub Judge, Hissar**, 1999(3) PLR 1. It was held that the said provision has been made with an object of expeditious disposal of application and if sufficient material is made available in support of the claim for recount of votes, the court would be justified in ordering recount of votes though the same cannot be directed on a mere asking. In other words, if a *prima-facie* case for recount is made out, nothing prevents the Court from ordering 'scrutiny' and 'computation' of votes without asking the election petitioner to lead evidence for detailed inquiry.

[13]. As regard to scope of interference under Article 227 of the Constitution, there can hardly be any doubt that the power of superintendence conferred by Article 227 of the Constitution is not confined to administrative superintendence only, but includes the power of judicial revision also even where no appeal or revision lies to the High Court. (Ref: (i) **Waryam Singh v. Amar Nath**, AIR 1954 SC 215; and (ii)

Achutananda Baidya v. Prafulla Kumar Gayen, (1997)5 SCC 76).

[14]. Similarly, powers under Article 227 of the Constitution can also be invoked in a case where grave injustice has been done unless the High Court interferes. (Ref: **Banerjee D.N. v. P.N. Mukherjee**, AIR 1953 SC 58).

[15]. It is equally well settled that in exercise of its powers under Article 227, the High Court can interfere in the cases:

(i) where the subordinate Court or a Tribunal refused to exercise jurisdiction;

(ii) order resulting in manifest injustice;

(iii) where though an alternative remedy is available but neither it is speedy nor effective; or

(iv) a case of flagrant violation of law is made out , etc. etc.

(Ref: **Trimbak Gangahar Telang v. Ram Chandra Ganesh Bhinde**, (1977)2 SCC 437).

[16]. In **Faquir Chand Anant Ram v. Gopi Chand**, AIR 1962 Punjab 117, this Court took the view that in a proper case, the High Court may *suo-motu* interfere, if so required.

[17]. In the present case, there was a margin of 3 votes only between the petitioner and respondent No.1. In the light of serious and specific allegations made by respondent No.1 in the election petition that the Presiding Officer deliberately invalidated some of her valid votes and if these allegations are found to be true even partially, since the result of the election is likely to be materially affected, it can be safely inferred that respondent No.1 has made out a *prima-facie* case for 'scrutiny' and 'computation' of all the valid votes polled in the election. No exception can,

thus, be taken to the impugned order dated 20.7.2006 passed by the Election Tribunal-cum-Civil Judge (Junior Division), Mahendergarh.

[18]. Turning to the reference received from the learned Election Tribunal-cum-Civil Court through the learned District Judge and in the light of the subsequent events brought on record through the same, there appears to be no doubt that due to non-availability of all the valid votes polled in the election, 'scrutiny' and 'computation' of the votes polled in favour of different candidates is not possible.

[19]. Undoubtedly, by destroying the ballot papers of booth No.281, a crude attempt to frustrate the electoral mandate has been made. The issue cannot be seen with a narrow compass as if it pertains to election between the petitioner and respondent No.1. The ramifications are too wide and if in such like matters, a firm and deterrent action is not taken, the tendency to demolish the institutions of self-governance at the grass-roots level, upon whom constitutional obligations are cast upon after the 73rd Amendment of the Constitution, would alarmingly increase.

[20]. An election reflects the will and wish of the people. It is a sacred and sacrosanct act, the purity of which needs to be maintained with zeal. Contrary to it, if the allegations made by the officers of the District Administration are to be believed, the Presiding Officer of booth No.1 destroyed the ballot papers of booth No.281 which could not have been done but for extraneous and mala fide considerations. The allegation that the petitioner (i.e. the elected candidate) had connived with the said Presiding Officer, has also to be viewed from this angle, though it is not desirable to express any final opinion as investigation in the case is still going on.

[21]. As regard to the pending election petition filed by respondent No.1, there appears to be some substance in the contention made on her behalf that with the destruction of ballot papers of one of the booths, the election petition has also been forcibly rendered infructuous. Learned Counsel for the petitioner, however, contends that the issue of fate of the election petition should be left to the wisdom of the Election Tribunal. Learned Counsel for respondent No.1, on the other hand, contends that election to the office of the Sarpanch is for a fixed tenure of 5 years, out of which almost 2 years have already gone by. It is argued that in the given circumstances, the election petition is not a speedy or effective alternative remedy to which respondent No.1 can be relegated.

[22]. In the case of **Smt. Vidya v. Civil Judge (Jr. Div.) & Ors.** (CWP No.9274 of 2004), decided on 30.9.2004, a Division Bench of this Court (to which I was a Member) was confronted with a somewhat similar situation where recount of votes in respect of an election of a Sarpanch was made impossible by tampering with the ballot papers and fabrication of records. It was brought to the notice of the Bench that with a view to create an impossible situation to know the wish and mandate of the electorate, one or the other candidate, by hobnobbing with the officials of the District Administration, had tampered with and fabricated the record to gain advantage in the pending proceedings. There also, an argument was raised on behalf of the elected candidate that the original mandate was in favour of the petitioner, therefore, notwithstanding the tampering with or fabrication of records, the said candidate be declared elected. However, repelling the said contention, the Bench concluded as follows:-

"*In the peculiar facts and circumstances of this case and*

> *keeping in view the subsequent developments, referred to above, which have completely marred the fairness and transparency in the election process and that too in connivance and/or collusion with those who are trustees of the official records, we are of the view that the election of the Sarpanch of Gram Panchayat Wazirabad is liable to be cancelled and/or declared invalid, warranting afresh mandate by the electorate of the village.*"

[23]. Consequently, and for the reasons afore-stated, the election of Sarpanch of Gram Panchayat of village Aghiyar held on 3.4.2005 is declared invalid and is set aside/cancelled.

[24]. As an off-shoot of the afore-mentioned finding, it is further directed that fresh election to the post of Sarpanch of Gram Panchayat of village Aghiyar be held in accordance with Section 178 of the Act, read with Rule 79 of the Haryana Panchayati Raj Rules, 1974. The fresh election shall be held within a period of three months from date of receipt of a certified copy of this order.

[25]. The revision petition as also the reference received from the learned Election Tribunal-cum-Civil Court, Mahendergarh stand disposed of accordingly.

January , 2007. [**Surya Kant**]
kadyan **Judge**